

Alterra Am. Ins. Co. v. National Football League, et al., Index No. 652813/2012

Discover Prop. & Cas. Co., et al. v. National Football League, et al., Index No. 652933/2012

EXHIBIT A

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK:

3 -----x
4 ALTERRA AMERICA INSURANCE CO.,

Index:
652813/12E

5 Plaintiff,

6 -against-

7 NATIONAL FOOTBALL LEAGUE, et al.

8 Defendant.

9 -----x
10 DISCOVER PROPERTY & CASUALTY COMPANY, et al.,

11 Plaintiff,

Index:
652933/12

12 -against-

13 NATIONAL FOOTBALL LEAGUE, et al.,

14 -----x
15 60 Centre Street
16 New York, New York 10007
17 April 29, 2019

18 B E F O R E:
19 HONORABLE ANDREA MASLEY, Justice

20 A P P E A R A N C E S:

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1 A P P E A R A N C E S :

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Tal R. Hahn,
Senior Court Reporter

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1 the typical things that --

2 THE COURT: I don't think I have burden and
3 harassment in here. But I do have -- I do have, you
4 know, a large unwieldy case that I'd like to find a way
5 to organize it.

6 MR. CARROLL: I understand that, your Honor.

7 THE COURT: But that is all on consent.
8 It's not -- I don't think you have what you need to get
9 a TRO. That is for sure. But we should be able to
10 work something out.

11 MR. CARROLL: Your Honor, I presume your
12 Honor will set a briefing schedule on the preliminary
13 injunction aspect of it. We could continue to confer
14 in the interim, and we will. And if something works
15 out, obviously we will report back to your Honor. But
16 from a TRO perspective, we just don't see it.

17 THE COURT: Right. What if the nonparty
18 teams were to produce the documents to which they have
19 no objection?

20 MR. CARROLL: That would be a fantastic start
21 to a process that might be something that we could then
22 work out, your Honor.

23 THE COURT: I can't help but feel that --
24 that you are using this iss ue to bring all the teams
25 before Dolinger. Why not just produce the documents

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1 which you don't object to? Why not do that now?

2 MR. SCHAFER: We want to do that.

3 THE COURT: They will take them.

4 MR. SCHAFER: We have to have an agreement
5 on what the search terms are and who the custodians
6 are. And they refused to agree to that. That was part
7 of our proposal. We said we will by May 10th -- we
8 gave them a specific date. We said by May 10 on every
9 one of these thirty-two we will give you the custodians
10 and accept the search terms that Judge Dolinger agreed
11 to in his eighty-one page ruling, and if there is
12 anything, you know, other than that that is specific to
13 the clubs, we will talk to you about that.

14 So we have said that. And if I may, your
15 Honor, and I do this with some trepidation because your
16 Honor has already said that you don't think you have
17 sufficient annoyance, burden, prejudice, et cetera, and
18 I -- with all due respect I really do think that you
19 do. And if you look at the cases, particularly the
20 Federal cases that talk about this because it happens
21 all the time, the possibility of subjecting parties to
22 inconsistent adjudications and discovery obligations,
23 especially when they are nonparties is the poster child
24 of what this type of motion is about, and what this
25 statute is intended to do.

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1 to each other and respectful? So I appreciate that.
2 And it means a lot to me in all of my three hundred
3 fifty cases that the parties treat each other this way.
4 But here we are.

5 So, if the plaintiffs would agree to -- these
6 are the search terms that you have proposed to the
7 nonparties? They have that?

8 MR. SIMPSON: Your Honor, we did propose
9 search terms six months ago and we didn't make any
10 progress with them. I get it, we are not talking about
11 the past. But I just want to add that Mr. Schafler has
12 more recently proposed using the search terms from
13 Judge Dolinger's opinion. The majority of those are
14 applicable here, but because the teams have specific
15 players we believe there would be a few more team
16 specific that would have to be added.

17 THE COURT: So what about agreeing to the
18 general -- step one; general. We will do the specific
19 players separately, or you could make up a list, a
20 supplemental list of particular players. But for now
21 they do a search using Dolinger's terms.

22 MS. SIMPSON: I think that would be a great
23 first step. I think one thing we would also need to
24 clarify with them is location of searches. Obviously
25 our subpoenas go well beyond ESIs and e-mails and

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1 things like that. If they have hard copy files, if
2 they have old databases, we would need to work around
3 the parameters. I think that it would be a very good
4 step.

5 MR. CARROLL: Your Honor, if we could do that
6 and get them to produce their documents in the next
7 thirty days, I would be prepared to recommend to my
8 colleagues that we stand down for thirty days.

9 MR. SCHAFLEER: Better than where we are right
10 now, your Honor. We will be happy to proceed on that
11 basis.

12 THE COURT: So you would begin with the
13 Dolinger terms and produce the documents immediately,
14 to which there are no objections. And then plaintiffs
15 will provide you with a list of specific per team,
16 right? Regarding specific players.

17 They are not seeking -- just to be clear, you
18 are not seeking privilege HIPA --

19 MR. CARROLL: That's correct.

20 THE COURT: -- issues. So that is --

21 MR. SCHAFLEER: That was not clear to me
22 before but I am happy to hear that.

23 MR. CARROLL: With the understanding, your
24 Honor, that if need be, we could then come back to your
25 Honor in thirty days and revisit where we are?

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1 THE COURT: The privilege and the HIPA?

2 MR. CARROLL: No. No. The production and
3 where we are in connection with the rest of whether we
4 will have to do something else on the Order to Show
5 Cause. If, for example, they produce five documents we
6 will have issues and concerns and problems. We will
7 need to address whether we are going to proceed in
8 other jurisdictions. We are standing down for now but
9 not giving up the right to proceed in those other
10 jurisdictions. If we feel we need to, and if your
11 Honor ultimately rejects the Order to Show Cause. But
12 that's a fight for a different day.

13 THE COURT: Well, I wouldn't be able to
14 determine that anyway.

15 MR. CARROLL: Understood.

16 THE COURT: Until I get arguments from both
17 sides and give you an opportunity to reply to their
18 papers anyway. If we could avoid all of that, that
19 would be much better.

20 MR. CARROLL: Understood, your Honor.

21 THE COURT: Okay. Let's talk about dates.

22 So you basically put together your
23 opposition, right?

24 MR. CARROLL: Yes, your Honor.

25 THE COURT: So we are only talking about a

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1 make maximal efforts with every one of these thirty-two
2 teams.

3 THE COURT: So May 13th you could do that?

4 MR. SCHAFER: To begin production?

5 THE COURT: To make the production consistent
6 with the Dolinger terms.

7 MR. HOLINSTAT: Your Honor, we will certainly
8 get the custodian to run the searches. In terms of how
9 the documents could be done, we would offer rolling
10 production. If it's ten million documents versus five
11 thousand, it just depends on how many documents there
12 are. We offered this before to do this on a rolling
13 basis --

14 THE COURT: See, the problem I have with a
15 rolling basis is if you would just produce the
16 documents to which there is no objection, the rolling
17 basis meaning you have to review the ten thousand or --

18 MR. HOLINSTAT: Yes, your Honor.

19 THE COURT: And you will roll it as you
20 review them?

21 MR. HOLINSTAT: Yes, your Honor. And the
22 idea is we have to search for privilege anyway to take
23 it out and we would continue to produce them as they
24 come out.

25 MR. CARROLL: Your Honor, to make it easy,

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1 MR. CARROLL: Thank you, Judge.

2 MR. DOLIN: Thank you, your Honor.

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5 Certified to be a true and accurate
6 transcript of the stenographic minutes taken within.

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8 Tal R. Hahn,
9 Senior Court Reporter

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